CHAPTER 5 SPECIAL PROVISIONS

The following subchapters include provisions that address certain discharges and factors that could affect the application of other provisions in the proposed Policy. They include: (1) storm water and urban runoff; (2) nonpoint source discharges; (3) site-specific objectives; (4) watershed management and TMDLs; and (5) exceptions to the proposed Policy provisions.

CHAPTER 5.1 STORM WATER AND URBAN RUNOFF

I. PRESENT STATE POLICY

The 1972 amendments to the Federal Water Pollution Control Act, also known as the CWA, specified that point source discharges of pollutants to surface waters must be in compliance with an NPDES permit. In California, NPDES permits are issued by the SWRCB and the nine RWQCBs. The 1987 amendments to the CWA added Section 402(p) which specified that discharges of storm water from municipal separate storm sewer systems (MS4's) serving a population of 100,000 or more, and from industrial activities (specified at 40 CFR 122.26), must be in compliance with NPDES permits.

MS4 PERMITTING

The RWQCBs have adopted NDPES storm water permits for MS4's required to be permitted and for facilities not suited for coverage under the General Industrial Permit (discussed below). The MS4 permits require the discharger to develop and implement a Storm Water Management Plan whose goal is to reduce the discharge of pollutants to the maximum extent practicable (MEP). MEP is the performance standard specified in Section 402(p) of the Clean Water Act. Components of the storm water management plan address public education and outreach; illicit connection/illegal discharge detection and elimination; fiscal resources; monitoring; and the best management practices (BMPs) which will be utilized. To date, the efforts of the municipalities subject to MS4 permits have been focused on implementation of BMPs to *reduce* pollutants, rather than on treatment of storm water to *remove* pollutants.

INDUSTRIAL/CONSTRUCTION PERMITTING

The SWRCB has adopted two statewide NPDES general storm water permits. The first, originally adopted on November 19, 1991, and subsequently reissued on April 17, 1997, addresses storm water discharges associated with 10 broad categories of industrial activities. This permit is known as the General Industrial Permit. The second, adopted on August 20, 1992, addresses storm water discharges associated with construction activities resulting in a land disturbance of at least five acres. This permit is known as the General Construction Permit. Both of these permits are implemented (inspections, report review, complaint

investigation and enforcement) by the RWQCBs.

Both the General Industrial and Construction Permits are NPDES permits and must meet all applicable provisions of Sections 301 and 402 of the Clean Water Act. These permits require the implementation of management measures that will achieve the performance standard of best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT). Both the General Industrial and Construction Permits require the development of a Storm Water Pollution Prevention Plan (SWPPP) and a monitoring plan. The General Industrial Permit requires that an annual report be submitted each July 1; the General Construction Permit requires only filing of an annual certification.

Through the SWPPP, sources of pollutants are to be identified and the means to manage the sources to reduce storm water pollution are described. The SWPPP must include BMPs which can range from good housekeeping to structural controls.

II. ISSUE DESCRIPTION

Storm water discharges are highly variable both in terms of flow, pollutant load, and concentrations. In addition, the relationships between storm water discharges and water quality can be complex. The water quality impacts of storm water discharges are related to the uses designated by states and tribes in their water quality standards, the quality of the storm water discharge, and the quantity of the storm water. Uses can be impacted by both the water quality and water quantity. Depending upon site-specific considerations, some of the water quality impacts of storm water discharges may be more related to the physical effects than the type and amount of pollutants present in the discharge. Because of the nature of storm water discharges and the typical lack of information on which to base numeric water quality based effluent limitations, it has not been feasible for the SWRCB to establish numeric effluent limitations for storm water permits. The effluent limitations contained in the storm water permits (both MS4, and General Industrial and Construction Permits) are, therefore, narrative and include the requirement to implement the appropriate control practices and/or BMPs. The BMPs may include treatment of storm water discharges, along with source reduction which will meet the appropriate performance standard (MEP for MS4 permits or BAT/BCT for the general industrial and construction permits) and achieve compliance with the Clean Water Act requirements.

The Permitting and Compliance Issues Task Force made the following recommendations that have relevance to storm water permits:

(1) For permits that do not contain quantitative effluent limits (e.g., storm water permits). the following policy should be adopted: "Permits shall require the implementation of control measures and tasks designed to achieve water quality objectives and other goals of the Statewide Plans. Compliance with permits will then be based on the degree of implementation of control measures and tasks."

(2) "There is not a clear method of demonstrating compliance with narrative water quality objectives when they are incorporated into permits. Where possible. compliance with narrative water quality objectives should be linked to compliance with numerical limits and toxicity limits."

III. ALTERNATIVES FOR SWRCB ACTION

Alternative 1. No action. This alternative makes no changes in the existing storm water program at the SWRCB and RWQCBs. As the State agencies responsible for the protection of water quality, the SWRCB and the RWQCBs are responsible for the issuance of NPDES permits as well as the implementation of the storm water program. Currently, all NPDES storm water permits require that the discharges must be protective of the beneficial uses of the receiving waters and that the discharge must be in compliance with existing statewide water quality control plans and appropriate basin plans. The existing NPDES storm water permits contain narrative objectives, rather than the numeric limits found in the more conventional NPDES permits. Compliance with these narrative objectives is a function of the dischargers' timely and effective implementation of the management practices and programs identified in the storm water management plan (MS4 permits) or the storm water pollution prevention plan (industrial/construction permits).

The specific narrative language and requirements relative to standards compliance is developed on a permit-by-permit basis. This allows the permit writer to consider the developmental state of the programs to be implemented, as well as other area-specific considerations.

This alternative is consistent with the Permitting and Compliance Task Force recommendation (1), above.

Alternative 2. Adopt a policy establishing standard language for use in NPDES storm water permits relative to compliance with water quality standards. While this alternative would provide all NPDES storm water permits a common ground for measuring compliance with water quality standards, it would also take away RWQCB flexibility in developing language consistent with program development and other site- or area-specific concerns.

IV. STAFF RECOMMENDATION

Adopt Alternative 1.

CHAPTER 5.2 NONPOINT SOURCE POLLUTION DISCHARGES

I. PRESENT STATE POLICY

Nonpoint source pollution control programs are used by the RWQCBs to protect beneficial uses, in waters of the State affected by nonpoint source pollution discharges. Currently, the SWRCB and RWQCBs are implementing three activities for control of nonpoint source pollution:

1. Nonpoint Source Management Plan (adopted by the SWRCB in November 1988);

2. Initiatives in Nonpoint Source Management (adopted by the SWRCB and submitted to US EPA in September 1995, implementing the Coastal Zone Act Reauthorization Amendments); and

3. Watershed Management Initiative.

The Nonpoint Source Management Plan (NPS Plan adopted by SWRCB in November 1988) is the foundation of the SWRCB/RWQCB nonpoint source pollution control program. The NPS Plan states that nonpoint sources are a major cause of water pollution in California and that more effective management of nonpoint sources will require:

- An explicit long-term commitment by the State Board and Regional Water Quality Control Boards (Regional Boards)

- More effective coordination of existing State Board and Regional Board nonpoint source related programs

- Greater use of Regional Board regulatory authorities coupled with non-regulatory programs

- Stronger links between the local, State, and Federal agencies which have powers that can be used to manage nonpoint sources

- Development of new funding sources.

The NPS Plan provides a general procedural approach to addressing all types of nonpoint source discharges. It does not address specific measures for individual types of nonpoint source discharges or sources of nonpoint source pollution. Three management approaches, frequently referred to as the Three-Tier Approach, are presented to address nonpoint source pollution problems. RWQCBs have the discretion to decide which or what mix of the three options are appropriate to address any given nonpoint source pollution problem. Those management approaches are:

1. Discharger voluntary implementation of best management practices (BMPs);

2. Regulatory based encouragement of BMP implementation; and

3. Adoption of effluent limitations in waste discharge requirements (WDRs).

BMPs are methods, measures, or practices designed and selected to reduce or eliminate the discharge of nonpoint source pollution. BMPs include structural and non-structural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities. The NPS Plan also states that "[i]n general the least stringent option that successfully protects or restores water quality will be employed, with more stringent measures considered if timely improvements in beneficial use protection are not achieved". The NPS Plan further states that "[w]hen necessary to achieve water quality objectives, Regional Boards will actively exercise their regulatory authority over nonpoint sources through enforcement of effluent limitations and other appropriate regulatory measures."

The Initiatives in Nonpoint Source Management (Initiatives) was developed in partial response to the Coastal Zone Act Reauthorization Amendments (CZARA 1990). CZARA requires states to develop and implement an enforceable nonpoint source program for reducing nonpoint source pollution from specific source and land-use categories in coastal areas. The U.S. EPA and the National Oceanic and Atmospheric Agency (NOAA) jointly prepared guidance documents with specific management measures that would fulfill CZARA requirements. Under the SWRCB's NPS Program, technical advisory committees (TAC) were formed to examine the U.S. EPA/NOAA management measures and their applicability to California. TACs were convened regarding: Confined Animals; Irrigated Agriculture; Pesticide Management; Plant Nutrient Management; Range Management; Abandoned Mines; Hydromodification; Wetlands and Riparian Areas; Marina and Recreational Boating; On-site Sewage Disposal Systems; and Urban Runoff. Each TAC prepared its own report with recommendations.

The Coastal Nonpoint Pollution Control Submittal consists of the NPS Plan and the Initiatives. This package was provided to the U.S. EPA and NOAA pursuant to Section 6217 of CZARA in September 1995. The Federal agencies have not taken final action on the submittal.

The Watershed Management Initiative (WMI) will guide a portion of SWRCB and RWQCB work and resource allocation decisions through a comprehensive perspective that considers water-related impacts within the context of a watershed. Under the WMI, each organization is preparing workplans (Chapters) that describe work activities and resource needs for the next 5 to 7 years in targeted and nontargeted areas. The goals of the WMI are to:

1. Integrate water quality monitoring, assessment, planning, standard setting, permit writing, point source regulatory programs, nonpoint source management, ground water

protection, and other programs at the SWRCB and RWQCBs to promote more efficient use of personnel and fiscal resources while ensuring maximum water quality protection benefits;

2. Provide water resource protection, enhancement, and restoration while balancing economic and environmental impacts by phasing in an integrated watershed management approach;

3. Promote cooperative relationships and better assist the regulated community and the public. This will require that the WMI approach include coordination with other Federal, State, and local agencies, as well as stakeholder participation in policy development and review; and

4. Reduce the impact of nonpoint source discharges on water quality through voluntary, collaborative decision-making at the local level that is open to all stakeholders.

In addition, the SWRCB will be maintaining an information clearing-house related to watershed projects, provide technical assistance (e.g., data management, standards development), evaluate the effectiveness and progress of watershed projects, provide financial assistance, support educational efforts, and coordinate program and agency efforts.

The RWQCBs basin plans provide additional discussion and provisions, such as, conditional waivers of WDRs for some types of nonpoint source discharges including agriculture, silviculture, mining, grazing, marinas and boating, highways, on-site septic systems, erosion and sediment control, and dredging. Additionally, the basin plans of the San Francisco Bay, Central Valley, Santa Ana, and San Diego RWQCBs have prohibitions of discharge applicable to nonpoint sources.

II. ISSUE DESCRIPTION

Nonpoint sources of water pollution are generally defined as sources which are diffuse and/or not subject to regulation under a CWA NPDES permit; however, RWQCBs may issue WDRs on nonpoint discharges. Appendix E is a partial listing of categories of nonpoint source discharge types. Nonpoint source discharges continue to be a major source of pollution in the State's waters. Most nonpoint discharges are diffuse in nature and, therefore, not generally susceptible to the same control measures as point source discharges. Water Code §13360, in general, does not allow the RWQCBs to specify the manner of compliance when issuing waste discharge requirements (WDRs). Therefore, while WDRs may specify effluent quality and receiving water quality, they ordinarily may not specify how those limits are to be met.

BMPs, such as prevention, source reduction, and alternative products and/or practices, are the primary current means of controlling nonpoint sources of pollution. From a regulatory perspective, implementation of BMPs is easiest to accomplish through voluntary action on the part of the discharger, or through RWQCB adoption of a conditional waiver of WDRs. As

stated above, the establishment and enforcement of effluent limits and receiving water limits in WDRs for diffuse nonpoint source discharges is difficult. Control of nonpoint source pollution needs an alternative flexible approach which may consist of any array of control techniques and which allows for periodic, if not continual, reassessment of success. WMI in conjunction with the NPS Plan provides such an approach.

The SWRCB requested two task forces to assist in development of this area for the ISWP/EBEP. Those task forces were the Watershed Task Force and Agricultural Waters Task Force. The Watershed Task Force, which addressed issues that overlap with the work of the CZARA TACs, recommended that the NPS Plan's three-tier approach be incorporated into the ISWP/EBEP without modification.

The Agricultural Waters Task Force's charge was to examine issues related to waters affected by agriculture; it did not include a broad examination of all types of nonpoint source pollution. This task force addressed issues in common with the CZARA TACs on irrigated agriculture, pesticide management, confined animals, range management, and plant nutrient management. The Agricultural Waters Task Force provided extensive recommendations regarding drainage from irrigated agriculture including: exemptions from beneficial use designations and water quality objectives, categorization of waters receiving drainage, definitions of new beneficial use subcategories, setting of water quality objectives, and implementation time schedules and provisions. The majority of the task force recommendations are directly or indirectly related to standards and standard setting. Recommendations regarding implementation are generally based upon the preceding recommendations addressing beneficial use definitions and designations, and water quality objectives. The proposed Policy focusses on implementation issues and is not intended to address beneficial use definitions or designation or to establish numeric water quality objectives. Those issues will be addressed in Phase 2 of the ISWP/EBEP.

III. ALTERNATIVES FOR SWRCB CONSIDERATION

Alternative 1. No action. Under this alternative, the SWRCB would continue support for the Watershed Management Initiative process and NPS Plan, and in the future would undertake review and consideration of specific types of nonpoint source discharges. Nonpoint source dischargers should be encouraged to (1) participate fully in the watershed initiative process, and (2) work closely with the RWQCBs to utilize the existing provisions of the Federal regulations allowing modification of beneficial use designations (seasonal and subcategories of uses), in addition to determining the need and appropriateness of site-specific water quality objectives.

Alternative 2. Require the RWQCBs to make full use of the regulatory authority granted in the Water Code to bring nonpoint source discharges into compliance with the CTR criteria and the toxicity requirements of the Policy. This alternative, which is based on the acknowledgement that nonpoint source pollution continues to degrade the quality of the waters of the State, would deviate from the existing three-tiered approach in the NPS Plan.

However, this alternative takes away the flexibility of the RWQCBs and nonpoint source dischargers by reducing, if not eliminating, the possibility of a cooperative watershed stewardship-based approach.

IV. STAFF RECOMMENDATION

Adopt Alternative 1.

CHAPTER 5.3 SITE-SPECIFIC OBJECTIVES

I. PRESENT STATE POLICY

Currently, there is no state policy on the development of site-specific water quality objectives for inland surface waters, enclosed bays, and estuaries. The Ocean Plan allows the RWQCBs to establish alternative water quality objectives (i.e., site-specific objectives) under specified conditions (described below). Language on the development of site-specific objectives is included in the basin plans of four of the nine RWQCBs.

II. ISSUE DESCRIPTION

Site-specific water quality objectives refer to objectives that are based on the conditions of a particular area, or site. Generally, these objectives are adopted by the RWQCBs in their basin plans. The proposed priority pollutant criteria[1] developed for the CTR are based on general nation-wide conditions. The U.S. EPA does not intend to undertake a complete analysis of every body of water in the State in the development of the proposed CTR criteria. Thus, there may be situations where application of the CTR (or NTR) criteria is inappropriate for a particular water body (i.e., they are too stringent or not stringent enough) and the development of State-adopted site-specific objectives is appropriate.[2]

The Federal regulation at 40 CFR 131.11(b)(1)(ii) allows states to adopt water quality criteria based on CWA Section 304(a) guidance "modified to reflect site-specific conditions". Like all water quality criteria, site-specific objectives must protect the designated uses and be based

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[1] Federal water quality "criteria" are comparable to State water quality "objectives".

[2] The U.S. EPA (1994) acknowledges that national criteria may be under- or over-protective if (1) the species at the site are more or less sensitive than those included in the national criteria data set, or (2) the physical and/or chemical characteristics of the site alter the biological availability and/or toxicity of the chemical. In response, the U.S. EPA developed three procedures to derive site-specific objectives: (1) the recalculation procedure; (2) the water-effect ratio procedure; and (3) the resident species procedure. The U.S. EPA has issued guidance on each of these procedures, which are designed to develop site-specific criteria to protect the uses of the specific water body if applied appropriately (U.S. EPA 1994).

on sound scientific rationale (40 CFR 131.11(a)), and are subject to U.S. EPA review and approval (40 CFR 131.21).

Under State law (Water Code §13241), water quality objectives must ensure "the reasonable protection of beneficial uses and the prevention of nuisance". Factors that shall be considered by a RWQCB in establishing water quality objectives include:

1. Past, present and probable future beneficial uses of water.
2. Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
3. Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
4. Economic considerations.
5. The need for developing housing within the region.
6. The need to develop and use recycled water.

In addition to Federal regulations and State law, provisions for establishing site-specific objectives, as well as site-specific objectives themselves, are contained in current water quality control plans. For example, the Ocean Plan includes language related to site-specific objectives that states:

> "the Regional Boards may establish more restrictive water quality objectives and effluent quality requirements than those set forth in this Plan as necessary for the protection of beneficial uses of ocean waters."

It also states that:

> "Regional Boards may impose alternative less restrictive provisions than those contained within Table B [i.e., water quality objectives] of the plan, provided an applicant can demonstrate that:
>
> Reasonable control technologies (including source control, material substitution, treatment and dispersion) will not provide for complete compliance; or
>
> Any less stringent provisions would encourage water reclamation;
>
> Provided further that:
>
> a) Any alternative water quality objectives shall be below the conservative estimate of chronic toxicity ... [provided in the Ocean Plan for selected constituents], and such alternative will provide for adequate protection of the marine environment;
>
> b) A receiving water toxicity objective of 1 TU_c is not exceeded; and

c) The State Board grants an exception ... to the Table B limits as established in the Regional Board findings and alternative limits."

The San Francisco Bay Basin Plan states that "the Regional Board intends to work toward the derivation of site-specific objectives for the Bay-Delta estuarine system" and "site-specific objectives will take into consideration factors such as all available scientific information and monitoring data and the latest U.S. EPA guidance, and local environmental conditions and impacts caused by bioaccumulation." The basin plan further states that the RWQCB may consider developing and adopting site-specific objectives when (1) it is determined that promulgated water quality standards or objectives are not protective of beneficial uses, and (2) site-specific conditions warrant less stringent effluent limits than those based on promulgated water quality standards or objectives, without compromising the beneficial uses of the receiving water. The basin plan states that such "site-specific objectives will be developed to provide the same level of environmental protection afforded by national criteria, but will more accurately reflect local conditions."

The Los Angeles Basin Plan states that the RWQCB "supports the idea of developing site-specific objectives (SSOs) in appropriate circumstances." The basin plan further states that the "development of site-specific objectives requires complex and resource intensive studies" and that "resources will limit the number of studies that will be performed in any given year." The basin plan also: (1) lists several elements that should be addressed to justify the need for a site-specific objective; (2) states that a detailed workplan will be developed with RWQCB and SWRCB staff, U.S. EPA, and other agencies (if appropriate) to develop the study; (3) acknowledges the need to conduct a use attainability analysis (UAA)[3] study, under certain conditions, before site-specific objectives may be developed; and (4) lists factors to be addressed in proposing a new objective.

Regarding items (1), (2), and (3), the Los Angeles Basin plan states:

> "Site-specific objectives must be based on sound scientific data in order to assure protection of beneficial uses. There may be several acceptable methods for developing site-specific objectives. A detailed workplan will be developed with Regional Board staff and other agencies (if appropriate) based on the specific pollutant and site involved. State Board staff and the USEPA will participate in the development of the studies so that there is agreement on the process from the beginning of the study.

[3] A use attainability analysis (UAA), as defined in 40 CFR 131.3(g), is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in 40 CFR 131.10(g). Under 40 CFR 131.10(j), states are required to conduct a UAA whenever (1) the state designates or has designated uses that do not include the [fishable-swimmable] uses specified in CWA § 101(a)(2), or (2) the state wishes to remove a designated use that is specified in CWA § 101(a)(2) or adopt subcategories of such uses that require less stringent criteria (also U.S. EPA 1994).

Although each study will be unique, there are several elements that should be addressed in order to justify the need for a site-specific objective. These may include, but are not limited to:

- Demonstration that the site in question has different beneficial uses (e.g., more or less sensitive species) as demonstrated in a UAA or that the site has physical or chemical characteristics that may alter the biological availability or toxicity of the chemical.

- Provide a thorough review of current technology and technology-based limits which can be achieved at the facility(ies) on the study reach.

- Provide a thorough review of historical limits and compliance with these limits at all facilities in the study reach.

- Conduct a detailed economic analysis of compliance with existing, proposed objectives. Conduct an analysis of compliance and consistency with all federal, state, and regional plans and policies."

Two basin plans contain general statements regarding site-specific objectives. The Central Valley Basin Plan states that "objectives may apply region-wide or be specific to individual water bodies or parts of water bodies. Site-specific objectives may be developed whenever the Regional Water Board believes they are appropriate." The Lahontan Basin Plan states that adequate data on existing ambient levels of constituents were used to develop numerical objectives for specific water bodies and that the site-specific objectives supersede the objectives that apply to all waters in the region to the extent of any overlap.

The other five RWQCB basin plans do not address developing site-specific objectives specifically. A few basin plans contain site-specific objectives for priority pollutants (i.e., the San Francisco Bay Basin Plan and the Santa Ana Basin Plan include site-specific objectives for some metals, and the Central Valley Basin Plan contains site-specific objectives for some metals and selenium.

The rescinded ISWP and EBEP contained the following language on the development of site-specific objectives:

"After compliance with CEQA, and with State Board approval, a Regional Board may establish more restrictive water quality objectives, as necessary for the protection of beneficial uses, or impose less restrictive water quality objectives than those set forth in this plan. Such objectives are subject to approval by EPA. Site-specific objectives

may be established provided all required control measures have been taken and it can be shown that either:

1. (a) the site-specific objective is derived by scientifically defensible methods (e.g., as described in U.S. EPA 1993 Water Quality Standards Handbook, U.S. EPA Office of Water Regulations and Standards, Washington, D.C.), and

   (b) the most sensitive beneficial use is protected (for aquatic life, that use should be the most sensitive use that has existed since 1975 or, if these data are not available, that use should reflect the best water quality that has existed since 1975), and

   (c) for aquatic life objectives, a chronic toxicity objective of 1.0 TU_c is not exceeded, or it is shown that the substance for which a site-specific objective is proposed does not contribute to chronic toxicity, and

   (d) for human health objectives for existing or designated use of municipal or domestic water supply (MUN), the site-specific objective does not exceed the Maximum Contaminant Level (MCL), and

   (e) tissue concentrations of the pollutant in question in fish and shellfish are below levels harmful to aquatic life or wildlife, or the health of human consumers of such organisms. Site-specific human health objectives shall be based on a recalculation of the objective using measured site-specific bioconcentration factors, fish consumption, body weight, and/or relevant factors, and

   (f) the site-specific objective will provide for the attainment and maintenance of the water quality objectives of downstream waters; or

2. the full potential of designated beneficial uses has not existed since 1975 and the requirements of 40 CFR 131, including a use attainability analysis, if required, have been met.

Site-specific acute or chronic toxicity objectives may only be developed through a use attainability analysis (i.e., option 2).

Site-specific objectives shall be established consistent with the Porter-Cologne Water Quality Control Act and the federal Clean Water Act."

The Chemical-Specific Objectives Task Force recommended that: (1) the development of site-specific water quality objectives for inorganic and organic chemicals should be allowed where appropriate; and (2) the State should develop detailed guidance for the development of

site specific objectives similar to the outline being developed by the Site-Specific Objectives Task Force (discussed below). The task force further stated that water quality objectives "must be based on sound scientific rationale and protect the designated use of the receiving water" and that "under the following conditions, RWQCBs may consider the development of site-specific objectives (SSO) when:

- a statewide objective is not being achieved in the receiving water;
- an NPDES permittee does not meet an anticipated numeric effluent limit based on the statewide objective and cannot be assured of achieving the effluent limit through reasonably achievable pollution prevention measures; and
- a written request for a site-specific study is filed with the Regional Board and funding sources are identified;
- or, the Statewide objective does not adequately protect the beneficial uses of a specific water body."

The task force also noted that the development of total maximum daily loads (TMDLs)/wasteload allocations (WLAs) to achieve the statewide standards may be more appropriate than developing a site-specific objective and that, under certain circumstances, a use attainability analysis may be appropriate. They stressed the need for consistency in the development of SSOs and that guidance should be provided by the SWRCB "regarding policies and procedures for developing SSOs based on scientifically defensible methods."

The Site-Specific Objectives Task Force recognized the importance of site-specific objectives in water quality planning and proposed language that provides a framework for their development. As the task force report states: "The key element of the plan language is a requirement that, for each SSO study, the regional board enter into a Memorandum of Understanding with interested parties which outlines the budget and cost-sharing plan, the responsibilities of the parties, study work plan, etc. The language also provides a mechanism for separating technical and policy decisions and addresses the establishment of permit limits during the time SSOs are being developed." The task force further stated that regulatory options other than site-specific objectives (e.g., total maximum daily loads, permit relief) may be appropriate in some cases and addressed such options in the proposed language.

The task force's proposed framework language, which was recommended by all interest group representatives of the task force (except as described below), follows:

"1. Water quality objectives shall be developed in a manner consistent with the Clean Water Act and the Porter-Cologne Act. In accordance with State law, objectives must provide for the reasonable protection of beneficial uses based on consideration of the factors listed in §13241 of the Porter-Cologne Act. In accordance with federal law and regulations, the objectives must be based on sound scientific rationale and protect the designated beneficial uses of the receiving water.

2. The Regional Water Quality Control Board (Regional Board) may develop site specific objectives whenever it determines, in the exercise of its professional judgment, that it is appropriate to do so. Under certain circumstances, other approaches to achieve the statewide objective may be more appropriate than development of a Site Specific Objective (SSO). These approaches include, but are not limited to, use-attainability analyses and development of total maximum daily loads/wasteload allocations. The Regional Board may investigate and implement other approaches as appropriate in the circumstances.

3. Regardless of action taken by the Regional Board pursuant to number 2 above, the Regional Board shall initiate the development of SSOs if:

   (a) a written request for a site-specific study, accompanied by a preliminary commitment to fund the study, subject to development of a Memorandum of Understanding (MOU), is filed with the Regional Board, and:

   (b) Either:

      (i) an existing or potential statewide objective or beneficial use is not achieved in the receiving waters;

      OR

      (ii) a holder of waste discharge requirements, including an NPDES permittee, does not or may not in the future meet an existing or potential effluent limit based on the statewide objective and cannot be assured of achieving the effluent limit through reasonably achievable pollution prevention measures.

4. In the event there are insufficient data to make the determinations outlined in 3 (b) and there is reasonable likelihood that one or all of these conditions may exist, the source control, effluent, and receiving water data necessary to make these determinations may be collected. The Regional Board shall amend the waste discharge requirements and/or permits in accordance with the relevant compliance schedule provision in the Statewide Water Quality Control Plan (Plan) if necessary to allow a reasonable time period to collect and analyze the data and report the results.

5. Prior to proceeding with site-specific objectives studies, the Regional Board shall enter into an MOU with interested parties, including, but not limited to, U.S. EPA Region IX, the State Water Quality [sic] Control Board (State Board), and the affected dischargers. The MOU shall include the following elements:

   (a) Formation of a project team, including the signatories to the MOU, the

State Department of Fish and Game, the U.S. Fish and Wildlife Service, and public interest groups.

(b) Responsibilities of the parties.

(c) Budget and cost-sharing plan.

(d) Administrative policies and procedures to govern oversight of the SSO process.

(e) Project schedule.

(f) A process for conflict resolution.

(g) Development of an SSO work plan.

6. SSOs shall be developed as follows:

(a) The Regional Board shall utilize guidance to be developed by the State Board to establish one or more scientifically defensible potential objective(s). The scientifically defensible potential objective(s) shall be derived using methods appropriate to the situation. Such methods may include U.S. E. P.A. approved methods, including, but not limited to, Water Effects Ratio (WER) procedure, recalculation procedures, a combination of recalculation and WER procedures, Resident Species Procedure, and/or other methods agreed to by the parties to the MOU. The State Board shall periodically review and update this guidance as new information and methodologies, including a risk-based framework for water quality criteria currently being developed by U.S. E.P.A., become available. In the absence of guidance, these concepts would be incorporated into the MOU.

(b) If, during the data interpretation phase of technical site-specific studies, the Regional Board, State Board, EPA Region IX, and/or other interested parties have differing opinions with regard to the interpretation of data collected in establishing the scientifically defensible potential objective(s), the Regional Board shall seek the advice of an independent scientific review panel consisting of at least three scientists with expertise in the field of aquatic toxicology and water quality criteria development methodology. The method of selecting the panel and other details regarding the conflict resolution process shall be included in the MOU. The findings of the scientific review panel shall be provided to the parties to the MOU, and made available to the members of the Regional Board in the event a scientific dispute remains unresolved at the time the scientifically defensible potential objective(s) is presented to the Regional Board for consideration.

(c) Following completion of the scientific studies and data interpretation, the Regional Board staff shall present to the Regional Board scientifically defensible potential objective(s). The Regional Board shall consider the following factors in adopting an SSO(s):

(i) the beneficial uses of the water body;
(ii) environmental characteristics of the water body;
(iii) water quality conditions that can reasonably be achieved through coordinated control of all pollutant sources;
(iv) economic considerations;
(v) the need for housing in the region;
(vi) the need to develop and use recycled water.

To ensure that economic and environmental impacts are adequately addressed, the Regional Board staff shall, as part of the SSO work plan:

(i) Direct the preparation of an economic analysis documenting the economic impacts from one or more of the scientifically defensible potential objective(s) and the projected effluent limits derived from the objective(s) and present the economic analysis to the Regional Board;
(ii) Comply with the California Environmental Quality Act.

(d) If attainment of the potential objective(s) is anticipated to be infeasible (as defined in 40 CFR 131), or if the Regional Board otherwise determines it is appropriate, the Regional Board shall conduct use attainability analyses in accordance with 40 CFR 131. If such analyses conclude that attainment of the designated beneficial uses is infeasible, the Regional Board shall designate alternative beneficial uses or subcategories of beneficial uses and develop appropriate water quality objectives to protect those beneficial uses.

7. During the period when site-specific objectives studies are being conducted, the Regional Board shall place effluent limits based upon the statewide water quality objectives into NPDES permits and waste discharge requirements only in conjunction with an appropriate compliance schedule. The compliance schedule shall allow sufficient time for collection of data, completion of SSO studies, and determination of compliance measures. While SSO studies are being conducted, interim effluent limits may be established by the Regional Board as provided in the Plan. Following final adoption of a site-specific objective, existing effluent limits shall be replaced with effluent limits consistent with the adopted site-specific objective. In the event that, for reasons beyond the control of the permittee, a decision whether or not to adopt site specific objectives has not been made before the end of the compliance schedule, the compliance schedule shall be extended for an additional period to allow time for a decision whether or not to adopt an SSO. However, in no

event may a compliance schedule exceed the time period allowed for compliance with the statewide water quality objectives in the Policy, unless a variance has been granted.

8. A site specific objective may include a compliance schedule."

The RWQCB representative on the Site-Specific Objectives Task Force objected to the proposed language requirement (cited above) that the RWQCB must initiate the development of site-specific objectives under the specified conditions and recommended that item number 3 begin as follows:.

"3. Regardless of action taken by the Regional Board pursuant to number 2 above, the Regional Board shall at a public meeting, consider initiating the development of SSOs if:"

This alternate language was proposed to address RWQCB concerns that they may be required or forced to develop a site-specific objective when it may not be appropriate. Other task force members stated that "in some cases dischargers must have the certainty of knowing that the studies will be done, especially since there is wide agreement that SSOs must be an integral part of the revised water quality [control] plans. SSO development provides the regional boards with a viable option of addressing economic and environmental impacts on a water body by water body basis. ... The inclusion of narrow and reasonable triggers helps assure that SSOs will be developed where needed and that the regional board will play an active role in the process."

To address several regulatory approaches in addition to, or instead of, the development of site-specific objectives, the Site-Specific Objectives Task Force prepared a decision tree and associated narrative discussion to provide a framework for determining an appropriate course of action. The decision tree is intended to help avoid initiation of costly and time-consuming studies that are not appropriately designed to resolve the specific issue in question. During the development of the proposed Policy, it was noted that several of the studies proposed for inclusion in the policy would benefit from both the proposed framework language and the decision tree developed by the task force. These task force products have been incorporated into Section VI of this FED (Special Studies) as a basis for an approach to be considered for all special studies (i.e., TMDLs, mixing zones, metals translators, use attainability analyses, regional monitoring, etc.) relevant to the proposed Policy. Therefore, the following alternatives address only those elements of the framework unique to the site-specific objectives development process.

III. ALTERNATIVES FOR SWRCB ACTION

Alternative 1. No action. Under this alternative, RWQCBs would continue to address the issue of site-specific objectives under current practices consistent with State and Federal law,

and with a consideration of Federal guidance. This alternative does not provide clarity on site-specific objectives development nor promote statewide consistency.

Alternative 2. Adopt policy language which provides a process framework for initiating and conducting site-specific objectives studies. Under this alternative, provisions would generally describe the process steps to be taken for: (1) determining the situations under which a site-specific objectives study may be appropriate; and (2) once the decision has been made to pursue a study, (a) general guidance on the study methods, and (b) the regulatory requirements to be applied while the study is being conducted. This general policy framework balances the concerns of the regulators of protecting water quality, by ensuring that the development of a site-specific objective is appropriate for the situation, with the concerns of the regulated community over existing or potential noncompliance with CTR criteria that may not be appropriate for the water body in question.

Alternative 3. Prepare and adopt technical guidance on the development of site-specific objectives. Under this alternative, SWRCB staff, in coordination with RWQCB staff and the U.S. EPA, would be responsible for the review of existing methods for deriving water quality objectives and the preparation of technical guidance. The technical guidance would be used by the SWRCB and RWQCB staff, as well as other interested persons, to develop site-specific objectives, if needed. Completion of this task will require significant time and resources, and will be addressed by the SWRCB after Phase 1 of the ISWP/EBEP.

Options to Supplement Alternative 2

Option A. Initiate and plan the process for developing site-specific objectives through a Memorandum of Understanding (MOU). Establishing an MOU entails defining the roles and responsibilities of the parties with respect to the tasks to be completed under their respective authorities. Because an MOU requires time-consuming negotiation and agreement, and is subject to administrative approvals, it would be cumbersome and difficult to formalize in a reasonable period of time. In addition, in the case of standards actions, entering into an MOU with a regulated entity would create a conflict of interest situation for the SWRCB and RWQCBs.

Option B. Initiate and plan the process for developing site-specific objectives through a workplan. A workplan identifies the tasks to be completed and could, if necessary, define the roles of the entities that will implement the tasks. Thus, a workplan can achieve the overall purpose of an MOU while providing the flexibility needed to conduct the site-specific objectives study in a timely manner.

Option C. Require the RWQCB to initiate development of a site-specific objective under the two conditions specified by the Site-Specific Objectives Task Force in item 3. Under this option, a RWQCB would have no choice but to pursue the development of a site-specific objective if (1) a written request for a site-specific objectives study and a preliminary commitment to fund the study were filed with the RWQCB, and (2) either (a) an existing or

potential statewide objective (or CTR criterion) or beneficial use is not achieved in the receiving waters, or (b) a permitted discharger does not, or may not in the future, meet an existing or potential effluent limitation based on a statewide objective (or CTR criterion) and cannot be assured of achieving the effluent limitation. Because the RWQCB has the authority and responsibility to address standards actions as necessary to protect beneficial uses, it is inappropriate to remove RWQCB discretion regarding the development of site-specific objectives. Furthermore, this option may limit RWQCB flexibility to address noncompliance situations in other more innovative or appropriate means.

Option D. Allow RWQCB discretion, based on consideration of information submitted under the two conditions specified by the Site-Specific Task Force in item 3, to initiate development of a site-specific objective. Under this option, the RWQCB would consider requests for site-specific objectives development at a public meeting, such as one convened to consider issues for the triennial reviews of the basin plans. The proponent of the site-specific objective development would submit the information required to support the request and the RWQCB would consider it and all other public comments received on the matter in its determination on whether or not to pursue the study. This public process provides that all interested persons have the opportunity to present relevant data, including recommendations for alternative regulatory solutions to noncompliance, as well as voice opposition or support for the site-specific objectives study proposal. The decision would, appropriately, remain with the RWQCB based on the public input.

IV. STAFF RECOMMENDATION

Adopt Alternative 2, and Options B and D.

CHAPTER 5.4 WATERSHED MANAGEMENT AND TMDLs

I. PRESENT STATE POLICY

In 1995, the SWRCB adopted a Strategic Plan for the SWRCB and RWQCBs. Strategic Goal 1 is stated as follows:

Our goal is to provide water resource protection enhancement and restoration while balancing economic and environmental impacts.

There is a growing need for comprehensive water resource protection. Ground and surface water, nonpoint and point source pollution and economic as well as environmental impacts must be brought into the decision making equation. This concept is guided by the following principles which are embodied in what is generally considered watershed management...

The first strategy listed for this SWRCB goal is:

Phasing in an integrated watershed management approach that prioritizes water resource protection actions within watersheds through watershed management plans.

The SWRCB and RWQCBs have developed a Watershed Management Initiative (WMI) that uses a comprehensive, watershed-based approach to address water quality issues.

II. ISSUE DESCRIPTION

The federal Clean Water Act (CWA) under Section 303(d) and the U.S. EPA's Water Quality Planning and Management Regulations (40 CFR Part 130) establish the TMDL process.

A total maximum daily load (TMDL), is the amount of a pollutant that may be discharged into a water body and still maintain water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. The TMDL process generally consists of five steps:

(1) Identification by each state of water quality limited waters[4] that do not now or are not expected to attain state water quality standards after implementation of technology-based effluent limitations, more stringent effluent limitations required by Federal, State, or local authority; and other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority, and identification of impairment;

(2) Establishment of priority rankings for the development of TMDLs;

(3) Development of TMDLs, wasteload allocations (WLAs), and load allocations (LAs);

(4) Incorporation of the loadings in the RWQCB basin plans; and

(5) Submittal of segments identified, priority ranking, and loads established to U.S. EPA for approval.

Each RWQCB identifies the water quality-limited waters within its respective region and establishes priority rankings and targeting of the listed waters. This information is reported to U.S. EPA in the 303(d) list. It is also compiled by the SWRCB and included in the 305(b) Report (SWRCB, 1996).

The 303(d) list is expected to play an integral role as RWQCBs prioritize watersheds in the WMI process. The goals of the WMI are to (1) provide water resources protection,

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[4] Waters that cannot meet or are not expected to meet water quality standards after implementation of technology-based controls (e.g., secondary treatment), more stringent state or locally-imposed effluent limitations, and other pollution control requirements (e.g., BMPs). See 40 CFR Section 130.7(b)(1).

enhancement, and restoration while balancing economic and environmental impacts; (2) promote cooperative relationships and better assist the regulated community and public through a voluntary, collaborative decision-making process that is open to all stakeholders; (3) integrate point source regulatory programs, nonpoint source programs, and other resource management programs on a watershed basis to promote effectiveness and efficiency; and (4) reduce the impact of nonpoint sources (SWRCB, 1995a and 1997).

The objective of a TMDL is to allocate allowable loads among different pollutant sources so that the appropriate control actions can be taken and water quality standards achieved. The most common method to determine the allowable load for the water body of interest is to find the pollutant loading that will attain and maintain applicable water quality criteria. Any loading above this capacity risks violating water quality standards. The allowable TMDL is defined as the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources. A margin of safety must be included with the two types of allocations to ensure that allocated loads, regardless of source, would not produce an excursion above water quality standards. The WLAs are those portions of the TMDL assigned to limit the amount of pollutants from existing and future point sources, while the LAs are those portions of the TMDL that are assigned to existing or future nonpoint sources and background sources (40 CFR 130.2.)

The TMDL provides an estimate of pollutant loadings from all sources and predicts the resulting pollutant concentrations. TMDLs may involve a single pollutant source or multiple sources (e.g., point and nonpoint sources). Current Federal regulations specify that TMDLs need to take into account critical conditions for stream flow, loading, and water quality parameters (40 CFR 130.7(c)(1)).

Emphasis has traditionally been on point source wasteload allocations, which were easily enforced by incorporating them into NPDES permits as discharge limits. Controlling point source discharges, however, does not ensure attainment of water quality standards, especially when nonpoint sources are a significant contributor to water quality problems. The current approach to the TMDL process is to weigh contributing pollution sources and develop an integrated pollution reduction strategy for point and nonpoint sources using a watershed management approach. This approach allows States to take a holistic view of their water quality problems from the perspective of instream conditions.

Using a watershed management approach also provides a flexible framework for addressing existing water quality problems, whether emanating from point or nonpoint sources. The watershed management approach facilitates cooperation between federal, state, and local agencies, and public and private entities with a stake in the process (hence the term stakeholder).

The need that arises for both the TMDL process and watershed management approach for water quality issues is for guidance. The public advisory task forces for the ISWP and EBEP have recommended that the SWRCB provide guidance regarding watershed management and TMDLs, and that the SWRCB allow stakeholders to try a more flexible approach to water body WLAs and LAs.

III. ALTERNATIVES FOR SWRCB ACTION

Alternative 1. No Action. Adoption of this alternative (a) would not further the SWRCB objective to address water resources in a more comprehensive watershed context; and (b) would not address public advisory task force recommendations to provide guidance regarding watershed management and TMDLs and to allow a more flexible approach to water body WLAs and LAs.

Alternative 2. Adopt recommendations of Watershed Task Force. The Watershed Task Force set forth the following Mission Statement and Objectives:

> Mission Statement: Provide input to the ISWP and EBEP to ensure that they are implemented in a manner that promotes a coordinated and comprehensive approach to addressing all factors affecting water quality.
>
> Objectives:
>
> A. Describe watershed management and ensure it is promoted in ISWP and EBEP as an implementation strategy for protecting beneficial uses.
>
> B. Promote net environmental gain concept in ISWP and EBEP.
>
> C. Measure the effectiveness of watershed management approach on a water quality, statewide, and individual basis.
>
> D. Include consideration of site-specific objectives as part of the watershed management planning process.
>
> E. Assure commitment by State Board, Regional Boards, U.S. EPA, and other entities.
>
> F. Ensure adequate and accurate information on which to base decisions.
>
> G. Promote public awareness, education, and involvement.

In the proposed Policy, the SWRCB begins to address the Watershed Task Force's Objective A by discussing the breadth, purpose, and process of watershed management and by stating that SWRCB policy is to encourage stakeholders to use the watershed approach to address

water quality issues involving toxic pollutants. The intent of these recommendations, as well as some of the language recommended by this task force, has been incorporated into the proposed Policy. More detailed guidance may be considered as part of development of the ISWP and EBEP.

Policy Section 5.3 addresses development of site-specific objectives and Policy Section 5.4 addresses how special studies for issues such as site-specific objectives fit into watershed management planning. (Thus addressing task force Objective D.) The development of SWRCB policy regarding the other objectives of this task force (net environmental gain, measuring effectiveness of watershed management approach, assuring commitment by agencies and other entities, ensuring adequate and accurate information, and public education) is being deferred at this time. Some of these issues may be considered as part of the development of the ISWP and EBEP; others may be addressed as part of SWRCB and RWQCB watershed planning.

The task force also recommended a TMDL process that is more "flexible" than the process set forth in the Clean Water Act and in federal regulations. The SWRCB encourages development of more flexibility in the TMDL process and is working with U.S. EPA toward that goal. It is, however, ultimately U.S. EPA which must revise this process.

Alternative 3. Adopt recommendations of the Permitting and Compliance Issues Task Force. This task force recommended that the TMDL process be set forth in the statewide water quality control plans and include such topics as use of a collaborative, watershed process emphasizing the inclusion of all affected parties; a detailed discussion of the criteria for determining whether a water body is impaired and for listing (and delisting) it on the Section 303(d) list; guidance for choosing monitoring stations; net environmental gain; adjustment of individual pollutant TMDLs based on net environmental gain; definition of procedural steps and roles of participants; and calculation of effluent limits based on WLAs.

The proposed Policy encourages and provides an explanation of a collaborative, watershed approach to addressing water quality issues as recommended by this task force.

The development of SWRCB policy regarding the other recommendations of this task force (determining how a water body is listed or delisted, definition of procedural steps and participant roles in watershed planning and TMDLs, guidance for selection of monitoring stations, net environmental gain) are not being addressed at this time as a part of the proposed Policy. Some of these issues may be considered as part of the development of the ISWP and EBEP. Others may be addressed as part of SWRCB and RWQCB watershed planning. This task force's recommendations regarding listing and delisting have been forwarded to the RWQCB staff who are developing 303(d) listing guidance.

Some of the task force members believed that U.S. EPA's process for development and implementation of TMDLs is too cumbersome. The task force would broaden the definition to include TMDLs based on factors other than loading and to enable stakeholders to proceed

with beneficial actions even though all issues have not been resolved and a TMDL has not been written.

As stated in response to the recommendations of the Watershed Task Force, the process for TMDLs is set forth in federal regulations. The SWRCB is working with U.S. EPA toward the goal of improving the TMDL process; however, ultimately it is up to U.S. EPA to revise the regulations. Stakeholders certainly can and are encouraged to proceed with actions that improve water quality. Whether their actions meet TMDL requirements though, is another issue.

This task force also stated that many special studies should be done on a water body or watershed, rather than on an individual discharger, basis, and that studies should be jointly funded. These issues are addressed in Chapter 6 - Special Studies.

Alternative 4. Adopt recommendations of Agricultural Waters Task Force. The Agricultural Waters Task Force recommended a planning process in which agricultural waters would be identified, categorized, assessed, and prioritized. The proposed Policy is not specifically addressing the implementation of water quality standards in agricultural waters at this time. Therefore, we cannot specifically address the prioritization of agricultural waters.

This task force, however, went on to recommend use of watershed management or nonpoint source management approaches and in certain circumstances a fairly detailed watershed regulatory approach for agricultural water. The task force also recommended that statistics identifying TMDLs and WLAs should not be required - instead TMDLs should be viewed as a tool to mitigate water quality impacts if other tools have been ineffective.

Both the watershed management and nonpoint source management approaches are available to stakeholders to address water quality issues. Many of the watershed processes recommended by the Agricultural Waters Task Force can be utilized in a watershed if the stakeholders choose to do so; however, for the reasons identified by the Watershed Task Force (below), the SWRCB is not requiring that these processes be followed:

> ...The bottom-up or grass roots approach has often consisted of voluntary efforts taken by local watershed stakeholders to control nonpoint sources and enhance beneficial uses via collaborative problem-solving. Because participants in these efforts have seen their interests effectively addressed, commitments have remained strong, and lasting, on-the-ground results have been achieved. In contrast, the top-down or regulatory approach consists of command-and-control specification of procedures, products, schedules, participants, etc., et. If regulators focus too heavily on procedural concerns, local stakeholder interests risk being neither identified nor addressed, commitment may be lacking, and improvements in beneficial uses may be nonexistent. A straightforward indication of the lack of attention to local stakeholders' real interests will be the development of watershed management plans that are never implemented. The regulatory approach can be useful in fostering the participation of stakeholders;

however, it will usually be of more importance to focus on a grass roots watershed management approach.

As stated in the discussion of Watershed Task Force recommendations, the proposed Policy has been drafted to enable stakeholders to proceed with beneficial actions even though a TMDL has not been written. However, federal TMDL requirements must ultimately be met, and be incorporated in the watershed management plans, for water quality-limited waters included on the 303(d) list.

Alternative 5. SWRCB staff develop, in consultation with RWQCB staff, criteria and guidance on TMDLs and watershed management approach. This recommendation is being implemented. Work is currently underway to provide guidance on the TMDL process and to blend the watershed management approach with the TMDL process. A work group of SWRCB and RWQCB staff is working on criteria for listing, delisting, and prioritization of TMDLs. SWRCB, RWQCBs, and other agencies are currently developing policy and workplan initiatives for these issues. The SWRCB is working with U.S. EPA to encourage development of a more flexible TMDL process.

In addition, the proposed Policy (See Section 6 - Special Studies) gives some guidance on how to conduct special studies, which is applicable to both the TMDL process and to projects being conducted on a watershed basis.

Alternative 6. Adopt some of the recommendations of Alternatives 2 - 5. The Watershed Task Force's recommendations that the Policy describe watershed management and TMDLs has been incorporated into the proposed Policy (Alternative 2). By incorporating these recommendations from Alternative 2, the proposed Policy also addresses those Permitting and Compliance Issues Task Force (Alternative 3) recommendations and Agricultural Waters Task Force recommendations (Alternative 4) regarding encouragement and explanation of a watershed approach to addressing water quality issues and discussion of TMDLs.

The SWRCB is not redefining the TMDL process as suggested by some of the task forces. The TMDL process has been established in federal regulation and thus the SWRCB does not have the authority to change it. The SWRCB is, however, encouraging development of a more flexible process and working with U.S. EPA and other interest groups to achieve this goal.

In addition, as recommended by the Watershed and Permitting and Compliance Issues task forces, the proposed Policy (See Section 6 - Special Studies) gives guidance on how to conduct special studies, which is applicable to the TMDL process, to projects being conducted on a watershed basis, and to development of site-specific objectives.

As recommended in Alternative 5, the SWRCB and RWQCBs are working to provide stakeholders with guidance on both watershed management and TMDLs.

IV. STAFF RECOMMENDATION

Alternative 6.

CHAPTER 5.5 EXCEPTIONS

I. PRESENT STATE POLICY

While the SWRCB does not have a general policy regarding exceptions to either water quality objectives or to provisions implementing those water quality objectives, it has established a precedent, in the Ocean Plan for allowing consideration of exceptions to State plans. Specifically, the Ocean Plan allows the SWRCB, in compliance with the California Environmental Quality Act, subsequent to a public hearing, and with the concurrence of the U.S. EPA, to grant exceptions to the Ocean Plan where the SWRCB determines that granting the exception will not compromise protection of ocean waters for beneficial uses, and that the public interest will be served.

Additionally, of those regions which have adopted prohibitions of discharge in their basin plans, the North Coast, San Francisco Bay, Central Coast, and Lahontan regions allow for exceptions to those prohibitions.

II. ISSUE DESCRIPTION

The provisions of the proposed Policy are based on general, statewide conditions with the intent of providing statewide consistency in implementing the CTR criteria and the toxicity water quality objective for the reasonable protection of beneficial uses. Despite the Policy goal of statewide consistency, the SWRCB recognizes that there are inherent differences between the nine hydrologic basins of the State and site-specific differences within the basins. Where site-specific conditions in individual water bodies or watersheds differ sufficiently from statewide conditions and those differences cannot be addressed through other provisions (e.g., site-specific objectives), an exception to the Policy may, therefore, be appropriate.

The U.S. EPA water quality standards regulations authorize the states to grant exceptions to their water quality standards. Specifically, the regulations allow the states to include policies in their water quality standards "generally affecting their application and implementation, such as ... variances" (40 CFR §131.13). The purpose of a variance is to provide a mechanism for not changing the underlying standards, while, at the same time, allowing NPDES permits to be issued in compliance the Clean Water Act (U.S. EPA 1994). A variance is a type of exception from water quality standards. In general, two types of exceptions from standards, including policies that implement the standards, are possible:

1. *Categorical exceptions* for categories of discharges, such as legally-mandated resource and pest management activities, and
2. *Case-by-case exceptions* specific to individual permitted dischargers.

Categorical exceptions would allow temporary, short-term, or seasonal exceedance of water quality standards for categories of discharges, such as, discharges incidental to pest control or resource management activities. The rescinded ISWP/EBEP referred to this type of exception as a "variance". The language of the rescinded ISWP/EBEP was not inclusive of all State, Federal, and local agencies with pest control and resource management responsibilities. The rescinded ISWP/EBEP specified that the RWQCBs could, "after compliance with the California Environmental Quality Act (CEQA), allow short-term variances [categorical exceptions] from plan provisions, if determined to be necessary to implement control measures for vector and weed control, pest eradication, or fishery management which [were] being conducted to fulfill statutory requirements under California's Fish and Game, Food and Agriculture, or Health and Safety Codes." The rescinded ISWP/EBEP also stated that RWQCBs could, "after compliance with CEQA, allow short-term or seasonal variances from plan provisions, if determined necessary, to implement control measures regarding drinking water which are being conducted to fulfill statutory requirements under the Federal Safe Drinking Water Act or the California Health and Safety Code" and "[s]uch variances may also be granted for draining water supply reservoirs, canals, and pipelines for maintenance, for draining municipal storm water conveyances for cleaning or maintenance, or for draining water treatment facilities for cleaning or maintenance." The Toxicity Task Force recommended that the language of the rescinded ISWP/EBEP be retained.

State and local agencies with statutorily-required resource management or pest control responsibilities would be the primary recipients of categorical exceptions to allow them flexibility in meeting their mandates. If such agencies are not granted categorical exceptions from water quality standards, most would have to substantially change their practices to labor intensive, longer term, higher cost alternatives. In some cases, alternative methods of pest management may not be available.

As there is no statewide policy regarding categorical exceptions, a few RWQCBs have addressed some of the above resource and pest management issues using different approaches. Where a RWQCB has demonstrated a reasonable, reliable, and successful approach to resource/pest management, that approach could be expanded statewide. For example, the Lahontan RWQCB addresses the use of rotenone for fishery management through basin plan provisions and a memorandum of understanding (MOU) with the DFG. The Department of Health Services, Environmental Health Branch has a permit from the U.S. Army Corps of Engineers and CWA Section 401 certification from the SWRCB for mosquito abatement activities in wetlands in the San Francisco Bay, and parts of the North Coast, Central Coast, and Central Valley regions. A successful regional approach, expanded into all applicable regions, has the advantage of known success and increases statewide consistency.

Case-by-case exceptions would allow consideration of exceptions to Policy provisions for

individual permitted dischargers. The Permitting and Compliance Issues Task Force recommended that this type of exception be allowed after compliance with CEQA and where the exception would not compromise protection of beneficial uses and is in the public interest. This approach is consistent with existing Ocean Plan provisions.

III. ALTERNATIVES FOR SWRCB ACTION

Alternative 1. No action. Under this alternative, the SWRCB would not allow consideration of exceptions to the Policy provisions. RWQCBs would be required to implement the Policy provisions without modification. Consequently, discharges associated with resource and pest management activities, as well as other activities, would have to meet water quality standards. This alternative limits not only SWRCB and RWQCB flexibility, but also the flexibility of other State and local resource agencies. For resource/pest management agencies, it could result in higher short- and long-term costs from conversion to mechanical, manual, or other alternative methods. This alternative would eliminate any possibility of impacts to non-target species during pest management activities. Overall effectiveness of pest management could be hampered. This alternative could lead to inadequate protection of sensitive water bodies in the State, and conversely to over regulation of some resource management discharges, i.e., beyond what is necessary for the protection of beneficial uses. With the promulgation of Federal water quality criteria and/or State adoption of water quality objectives, the potential for violation of the new water quality standards would increase if chemical methods are employed by the agency responsible for the resource/pest control action. This alternative is not consistent with the precedent set in the Ocean Plan.

Alternative 2. Allow the RWQCBs to grant categorical short-term or seasonal exceptions for resource management and pest control activities provided certain conditions are met. Under this alternative, a RWQCB could allow exceedance of the CTR criteria or toxicity objective for a limited period of time for statutorily-mandated resource management and pest control activities if the following conditions are met:

- The discharger must: notify potentially affected public and governmental agencies and provide a detailed description of the proposed action, including the proposed method of completing the action, time schedule, discharge and receiving water quality monitoring plan (before project initiation, during the project, and after project completion, with the appropriate quality assurance and quality control procedures), project CEQA documentation, contingency plans, identification of alternate water supply (if needed), residual waste disposal plans, and, upon completion of the project, certification by a qualified biologist that the receiving water beneficial uses have been restored.

This alternative provides flexibility to the RWQCBs and the resource management agencies, and the specified conditions for approval would ensure long-term protection of beneficial uses. Categorical exceptions would allow exceedance of one or more CTR criteria or the toxicity objective and may result in impairment of beneficial use(s) during the span of the

exceptions. The specified conditions could nominally increase resource/pest management agency costs for increased monitoring and documentation.

Alternative 3. Allow case-by-case, discharger-specific exceptions to the proposed Policy that may be granted by the SWRCB provided certain conditions are met. Where site-specific conditions in individual water bodies or watersheds differ sufficiently from statewide conditions and those differences cannot be addressed through other provisions of the Policy, the SWRCB may, in compliance with the California Environmental Quality Act, subsequent to a public hearing, and with the concurrence of the U.S. EPA, grant an exception to meeting a CTR criterion, the statewide toxicity objective of this Policy, or any other provision of this Policy where the SWRCB determines:

1. The exception will not compromise protection of enclosed bay, estuarine, and inland surface waters for beneficial uses, and

2. The public interest will be served.

IV. STAFF RECOMMENDATION

Adopt Alternatives 2 and 3.